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Paper No. 7

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JUN 13 2001

**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
Halseth, Barker, Hall, and Botich : DECISION REFUSING STATUS
Application No. 09/633,793 : UNDER 37 CFR 1.47(a)
Filed: 7 August, 2000 :
Attorney Docket No. 1032-P01510U :

This is in response to the petition under 37 CFR 1.47(a)¹ filed on 26 February, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 7 August, 2000, without an executed oath or declaration. Accordingly, on 29 September, 2000, Initial Patent Examination Division (IPED) sent a "Notice to File Missing Parts of Nonprovisional Application" requiring a signed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set.

¹A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

In response, on 26 February, 2001, petitioners submitted the present petition, accompanied by (a) a declaration and power of attorney signed by joint inventors Halseth, Barker, and Botich on behalf of themselves and joint inventor Hall, (b) a request and payment for a three month extension of the time for reply to the "Notice" above, the petition fee and late filing surcharge, and (c) a declaration by joint inventor Thor R. Halseth.

Petitioners assert, in the declaration by Thor R. Halseth, that Halseth asked Hall to sign the declaration on several occasions but that Hall refused to sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C.

§§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The present renewed petition lacks item (1).

Petitioners have not shown that the application was sent or given to the non-signing inventor for review. A grantable 37 CFR 1.47(a) petition requires that a copy of the entire application (specification including claims, drawings, if any, and the Declaration) was sent or given to the non-signing inventor for review.² Petitioners should provide a copy of the application as filed to the non-signing inventor and request that the inventor review the application and sign the declaration. Petitioners may provide proof of this by submitting, with a renewed petition, a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, if one or more of the inventors refuse to sign the declaration, petitioners must establish that the inventor(s) refused to sign the declaration after having been presented with the application papers. The showing of record does not establish that the non-signing joint inventor had an opportunity to review

²MPEP 409.03(d).

the application before being asked to sign the declaration. If a written refusal is provided, petitioners should provide the requisite proof of refusal by submitting a copy of that written refusal. If the refusal is made orally to a person, then that person must provide details in an affidavit or declaration of facts.


Further correspondence with respect to this matter should be addressed as follows:

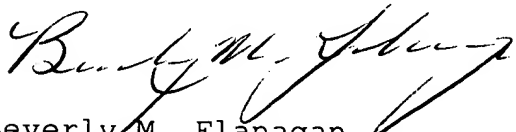
By mail: Assistant Commissioner for Patents
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By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
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Telephone inquiries related to this decision should be directed to Petitions Attorney Douglas I. Wood at 703-308-6918.


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